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2 IN THE UNITED STATES DISTRICT COURT
3

4 FOR THE NORTHERN DISTRICT OF CALIFORNIA

5 PACO SALDANA, No. C 10-05011 CW (PR)

6 Petitioner,

ORDER DISMISSING PETITION FOR A
WRIT OF HABEAS CORPUS AND
DENYING CERTIFICATE OF
APPEALABILITY

7 v.

8 BEN CURRY, Warden,

9 Respondent.

10 _____/

11 Petitioner, a state prisoner, filed this pro se habeas corpus
12 action challenging as a violation of his constitutional rights the
13 denial of parole by the California Board of Parole Hearings (Board)
14 on February 24, 2009. Thereafter, the Court dismissed the
15 action for failure to pay the filing fee, but subsequently reopened
16 the action when the fee was paid. The Court now reviews the
17 allegations in the petition to determine whether a cognizable claim
18 for federal habeas corpus relief is presented.

19 Petitioner maintains that the Board's finding that he was not
20 suitable for parole violated his right to due process because that
21 finding was not supported by "some evidence" that Petitioner poses
22 a current danger to society if released.

23 A "federal court may issue a writ of habeas corpus to a state
24 prisoner 'only on the ground that he is in custody in violation of
25 the Constitution or laws or treaties of the United States.'"
26

27 Swarthout v. Cooke, 131 S. Ct. 859, 861 (2011) (internal citation
28 omitted). The court may not grant habeas relief for state law

1 errors. Id.

2 In Cooke, the Supreme Court explained that earlier Supreme
3 Court cases had determined that the procedural protections to which
4 a parole applicant is entitled under the Due Process Clause of the
5 Fourteenth Amendment are "minimal." Id. at 862. In particular,
6 the Supreme Court had "found that a prisoner subject to a parole
7 statute similar to California's received adequate process when he
8 was allowed an opportunity to be heard and was provided a statement
9 of the reasons why parole was denied." Id. at 862 (citing
10 Greenholtz v. Inmates of Nebraska Penal & Corr. Complex, 442 U.S.
11 1, 16 (1979)). Thus, as long as a petitioner receives at least
12 that much process at a parole hearing, the federal court's habeas
13 review is at an end. See Cooke, 131 S. Ct. at 862.

14 Further, Cooke made clear that no Supreme Court case "supports
15 converting California's 'some evidence' rule into a substantive
16 federal requirement." Id. at 861. Therefore, the federal courts
17 have no authority in habeas to determine whether California's "some
18 evidence" rule was correctly applied. Id. at 863. Consequently,
19 if an inmate seeking parole "receives an opportunity to be heard, a
20 notification of the reasons as to denial of parole, and access to
21 [his] records in advance," then there is no due process violation
22 stemming from a claim that a parole denial did not comply with
23 California's "some evidence" rule of judicial review. Pearson v.
24 Muntz, 639 F.3d 1185, 1191 (9th Cir. 2011).

25 Here, as noted, Petitioner claims the Board's denial of parole
26 violated his right to due process because there was not "some
27 evidence" to find that Petitioner poses a current danger to society
28 if released. In light of the Supreme Court's determination that

1 the constitutionally-mandated procedural protections for which
2 federal habeas relief is available do not include a requirement
3 that there be some evidence (or any other amount of evidence) to
4 support the parole denial, the petition for a writ of habeas corpus
5 is DISMISSED for failure to state a cognizable claim for federal
6 habeas corpus relief.

7 A certificate of appealability will not issue because
8 Petitioner has not made "a substantial showing of the denial of a
9 constitutional right." 28 U.S.C. § 2253(c)(2). This is not a case
10 in which "reasonable jurists would find the district court's
11 assessment of the constitutional claims debatable or wrong." Slack
12 v. McDaniel, 529 U.S. 473, 484 (2000). Petitioner may, however,
13 seek a certificate of appealability from the Ninth Circuit Court of
14 Appeals.

15 The Clerk of the Court shall enter judgment, terminate all
16 pending motions and close the file.

17 IT IS SO ORDERED.

18 Dated: 1/6/2012



19 CLAUDIA WILKEN
20 UNITED STATES DISTRICT JUDGE
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